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**APR 22 2005**

**OFFICE OF PETITIONS**

In re Application of  
Thomas Eyhorn  
Application No. 10/775,463  
Filed: February 10, 2004  
Attorney Docket No. WAS 0618 PUS/  
Wa 10267-W

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DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 20, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

The petition under 37 CFR 1.137(b) will not be treated on its merits, but rather will remain in the file until the United States Patent and Trademark Office (Office) receives a renewed petition under 37 CFR 1.137(b), as well as the payment of the requisite petition fee, the amount due on the filing of the petition. The petition fee is \$1,500.00. However, the Office finance records indicate that petitioner paid only \$1,370.00. Accordingly, the petition fee is insufficient.

The Office notes:

35 U.S.C. 41(a)(7) provides that a petition for revival of an unintentionally abandoned application . . . must be accompanied by a petition fee set for in 37 CFR 1.17(m), unless the petition is filed under 35 U.S.C. 133 or 151 (on the basis of unavoidable delay), in which case the fee is set forth in 37 CFR 1.17(l). Thus, unless the circumstances warrant the withdrawal of the holding abandonment (i.e., it is determined that the application is not properly held abandoned), the payment of a

petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived. MPEP 711.03(c) (III) (B).

Accordingly, the Office lacks the discretion to, and will not, address the merits of any petition seeking revival of an abandoned application in the absence of the payment of the petition fee required by statute. In this regard, this application is properly considered abandoned by operation of 35 USC § 133 for failure to prosecute.

A request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)" and the difference owed of \$130.00 for the petition fee.

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Senior Petitions Attorney Christina Tartera Donnell:**

By mail:           Mail Stop Petition  
                  Commissioner for Patents  
                  P.O. Box 1450  
                  Alexandria, VA 22313-1450

By FAX:           (703) 872-9306  
                  Attn: Office of Petitions

By hand:           Customer Service Window  
                  Randolph Building  
                  401 Dulany Street  
                  Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

*Christina Tartera Donnell*

Christina Tartera Donnell  
Senior Petitions Attorney  
Office of Petitions